

1 **LAW OFFICES OF STEPHEN URE, PC**  
STEPHEN URE, ESQ. (CSB# 188244)  
2 1518 Sixth Avenue  
San Diego, CA 92101  
3 Telephone: (619) 235-5400  
Facsimile: (619) 235-5404

4 Attorneys for Plaintiff MAUREEN PARKER  
5

6  
7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO  
10

11 MAUREEN PARKER,  
12 Plaintiff,  
13 v.  
14 ALLSTAR MARKETING GROUP, LLC, et  
al,  
15 Defendants.  
16  
17

Case No. 37-2010-00106285-CU-TT-CTL  
**CONSENT JUDGMENT [PROPOSED]**

18 **1. INTRODUCTION**

19 1.1 On December 17, 2010, Plaintiff Maureen Parker (“Parker”) filed a complaint  
20 (“Complaint”) in San Diego County Superior Court, entitled *Maureen Parker v. Allstar*  
21 *Marketing Group, LLC*, San Diego County Superior Court Case Number Case No. 37-2010-  
22 00106285-CU-TT-CTL, for civil penalties and injunctive relief pursuant to the provisions of  
23 California Health & Safety Code §25249.5 *et seq.* (“Proposition 65”).

24 1.2 The parties to this Consent Judgment (“Parties”) are Parker and Defendant Allstar  
25 Marketing Group, LLC (“Allstar”), a limited liability company that employs 10 or more persons.

26 1.3 On or about June 14, 2010, Parker served Allstar and the appropriate public  
27 enforcement agencies with a pre-suit notice pursuant to Health and Safety Code Section  
28

1 25249.7(d), alleging that Allstar was in violation of Proposition 65. Parker’s notice and the  
2 Complaint in this Action allege that Allstar exposes individuals who use or otherwise handle  
3 tomato, strawberry, and pepper planters to lead, a chemical known to the State of California to  
4 cause cancer, birth defects and other reproductive harm, without first providing clear and  
5 reasonable warning to such persons. The notice and Complaint allege that Allstar’s conduct  
6 violates Health & Safety Code §25249.6, the warning provision of Proposition 65.

7 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court  
8 has jurisdiction over the subject matter of the violations alleged in the Complaint and personal  
9 jurisdiction over Allstar as to the acts alleged in the Complaint, that venue is proper in the County  
10 of San Diego, and that this Court has jurisdiction to enter this Consent Judgment as a full and  
11 final resolution of all claims which were or could have been raised in the Complaint based on the  
12 facts alleged therein.

13 1.5 The Parties enter into this Consent Judgment pursuant to a settlement of certain  
14 disputed claims between the Parties as alleged in the Complaint. By executing this Consent  
15 Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties’ intent that  
16 nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact,  
17 conclusion of law, issue of law or violation of law, nor shall compliance with the Consent  
18 Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law,  
19 issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or  
20 impair any right, remedy, argument or defense the Parties may have in this or any other or future  
21 legal proceedings.

22 **2. DEFINITIONS**

23 2.1 The term “Covered Products” means Topsy Turvy® planters that Allstar  
24 distributes, markets and/or sells within the State of California, including but not limited to  
25 Tomato Planter, Tomato Tree Planter, Tomato Herb Planter, Hot Pepper Planter, Strawberry  
26 Planter, and Hummingbird Planter.

27 2.2 The term “Effective Date” means the date on which this Consent Judgment is  
28 entered by the Court.

1       **3.     INJUNCTIVE RELIEF**

2             3.1     A Covered Product that is manufactured on or after 60 days after the Effective  
3 Date for sale in California shall either be reformulated pursuant to Section 3.2 or shall be labeled  
4 with a warning as provided in Section 3.3.

5             3.2     **Reformulation.** A Covered Product does not require a warning if the total lead  
6 content of its plastic components does not exceed 300 ppm.

7             3.3     **Product Labeling.** A Covered Product that does not meet the reformulation level  
8 of Section 3.2 shall contain a warning affixed to or printed on the Covered Product’s packaging or  
9 labeling. The warning shall be displayed with such conspicuousness, as compared with other  
10 words, statements, designs, or devices on the Covered Product, or its packaging or labeling, as to  
11 render it likely to be read and understood by an ordinary individual under customary conditions of  
12 purchase or use. The following warning statement shall be provided:

13                   “WARNING: This product contains a chemical known to the State of California to  
14 cause birth defects or other reproductive harm. Wash hands after handling.”

15             3.4     **Direct to Consumer Sales.** Allstar Marketing shall not operate any internet  
16 websites or catalogs in which any Covered Product is sold or offered for sale to a consumer in  
17 California. At least ninety days before it operates any internet websites or catalogs in which any  
18 Covered Product is sold or offered for sale to a consumer in California, Allstar Marketing shall  
19 give written notice to Plaintiff of such intent, and shall meet and confer in order to determine the  
20 scope of injunctive relief in addition to Section 3.1, if any, which may be entered upon a joint  
21 application to the Court. If the Parties do not agree on additional injunctive relief, if any, Plaintiff  
22 may apply by motion pursuant to this Consent Judgment for such relief, which shall be entered by  
23 the Court upon a showing that such relief is appropriate based on the law and facts submitted in  
24 the motion and any opposing materials submitted by Allstar Marketing.

25       **4.     SETTLEMENT PAYMENTS**

26             4.1     Allstar Marketing shall pay a settlement amount of \$60,000 to Parker, to be  
27 allocated by Parker as follows:  
28

1           4.1.1 **Civil Penalty:** \$5,000 as a civil penalty pursuant to Health and Safety  
2 Code Section 25249.7(b). Parker shall remit 75% of the civil penalty to the California  
3 Office of Environmental Health Hazard Assessment (“OEHHA”), pursuant to Health and  
4 Safety Code Section 25192.

5           4.1.2 **Attorneys’ Fees and Costs:** \$55,000 to reimburse Parker and her attorneys  
6 for their reasonable investigation fees and costs, attorneys’ fees, and any other costs  
7 incurred as a result of investigating, bringing this matter to Allstar’s attention, litigating  
8 and negotiating a settlement in the public interest, pursuant to Code of Civil Procedure  
9 Section 1021.5.

10          4.2 **Timing of payments.** Allstar shall deliver the payments required under this  
11 section to the address set forth in Section 13 below within 10 days of the Effective Date.

12 **5. CLAIMS COVERED AND RELEASED**

13          5.1 This Consent Judgment is a full, final and binding resolution between Parker on  
14 behalf of herself and the public interest and Allstar, and its parents, shareholders, divisions,  
15 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their successors and  
16 assigns (“Defendant Releasees”), all entities to whom they directly or indirectly distribute or sell  
17 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,  
18 franchisees, cooperative members, and Defendant Releasee’s licensors and licensees  
19 (“Downstream Defendant Releasees”) of any violation of Proposition 65 that was or could have  
20 been asserted in the Complaint against Allstar, Defendant Releasees, and Downstream Defendant  
21 Releasees, based on failure to warn about alleged exposure to lead contained in Covered  
22 Products, with respect to any Covered Products manufactured, shipped, or sold by Allstar prior to  
23 the Effective Date. The Parties further understand and agree that this release shall not extend  
24 upstream to any entities that manufactured the Covered Products for Allstar or any component  
25 parts thereof or to any distributors or suppliers who sold the Covered Products or any component  
26 parts thereof to Allstar.

27          5.2 In further consideration of the promises and agreements herein contained, the  
28 injunctive relief commitments set forth in Section 3, and for the payments to be made pursuant to

1 Section 4, Parker, on behalf of herself, her past and current agents, representatives, attorneys,  
2 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to  
3 institute or participate in, directly or indirectly, any form of legal action and release all claims,  
4 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,  
5 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not  
6 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether  
7 known or unknown, fixed, or contingent (collectively "claims"), against Allstar, Defendant  
8 Releasees, and Downstream Defendant Releasees. This release is limited to those claims that  
9 arise under Proposition 65 with respect to lead in the Covered Products, as such claims relate to  
10 the alleged failure to warn under Health & Safety Code Section 25249.6.

11 5.3 On behalf of itself and Defendant Releasees, Allstar waives all rights to institute  
12 any form of action against Parker, her attorneys, consultants, and representatives for all actions  
13 taken or statements made in the course of this Action prior to the date of the execution of this  
14 Consent Judgment.

15 5.4 Compliance with the terms of this Consent Judgment by Allstar shall constitute  
16 compliance with Proposition 65 with respect to lead in any Covered Products that are  
17 manufactured, shipped, or sold by Allstar following the Effective Date.

18 **6. COURT APPROVAL**

19 6.1 This Consent Judgment is not effective until it is approved and entered by the  
20 Court and shall be null and void if, for any reason, it is not approved and entered by the Court  
21 within one year after it has been fully executed by all Parties.

22 6.2 If the Court does not approve the Consent Judgment, the Parties shall meet and  
23 confer as to whether to modify the terms of this Consent Judgment or appeal the ruling. If the  
24 Parties do not jointly agree on a course of action to take, the case shall proceed on its normal  
25 course on the trial court's calendar.

26 6.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
27 appellate court, the Parties shall meet and confer as to whether to modify the terms of this  
28 Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies

1 that have been paid to Plaintiff pursuant to Section 4 shall be refunded within 15 days after  
2 remittitur to the trial court, and the case shall proceed on its normal course on the trial court's  
3 calendar.

4 **7. ENFORCEMENT**

5 7.1 Any Party may, by motion or application for an order to show cause before this  
6 Court, enforce the terms and conditions contained in this Consent Judgment. A Party may  
7 enforce any of the terms and conditions of this Consent Judgment only after that Party first  
8 provides 30 days notice to the Party allegedly failing to comply with the terms and conditions of  
9 this Consent Judgment and attempts to resolve such Party's failure to comply in an open and good  
10 faith manner.

11 **8. MODIFICATION**

12 8.1 This Consent Judgment may be modified from time to time by express written  
13 agreement of the Parties, with the approval of the Court, or by an order of this Court upon motion  
14 and in accordance with law. A Party seeking to modify this Consent Judgment shall attempt in  
15 good faith to meet and confer with all affected Parties prior to filing a motion to modify the  
16 Consent Judgment.

17 **9. ACCURACY OF SALES DATA**

18 Allstar understands that the sales data provided to counsel for Parker by Allstar was a  
19 material factor upon which Parker has relied to determine the amount of payments made pursuant  
20 to Health and Safety Code §25249.7(b) under this Agreement. Allstar represents that the sales  
21 data provided to plaintiff is true and accurate.

22 **10. ENTIRE AGREEMENT**

23 10.1 This Consent Judgment contains the sole and entire agreement and understanding  
24 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
25 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
26 and therein. No representations, oral or otherwise, express or implied, other than those  
27 specifically referred to in this Consent Judgment have been made by any Party hereto. No  
28 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding

1 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions  
2 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
3 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

4 **11. GOVERNING LAW AND APPLICATION**

5 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
6 California and shall apply only to Covered Products that are sold or offered for sale in the State of  
7 California.

8 11.2 This Consent Judgment shall apply to and be binding upon Parker and Allstar and  
9 its divisions, subdivisions, and subsidiaries, and the Parties' successors and assigns .

10 11.3 The Parties, including their counsel, have participated in the preparation of this  
11 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
12 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
13 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
14 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
15 of the manner of the preparation of this Consent Judgment.

16 **12. RETENTION OF JURISDICTION**

17 12.1 This Court shall retain jurisdiction of this matter to implement, modify, and  
18 enforce the terms this Consent Judgment.

19 **13. PROVISION OF NOTICE**

20 13.1 All notices required pursuant to this Consent Judgment and correspondence shall  
21 be sent to the following:

22  
23 For Parker:

24 Law Offices of Stephen Ure, PC  
25 1518 Sixth Avenue  
26 San Diego, CA 92101  
27  
28

1 For Allstar:

2 Jennifer De Marco  
3 General Counsel  
4 Allstar Marketing Group, LLC  
5 2 Skyline Drive  
6 Hawthorne, NY 10532

7 With a copy to:

8 Jeffrey B. Margulies, Esq.  
9 Fulbright & Jaworski L.L.P.  
10 555 South Flower Street, 41st Floor  
11 Los Angeles, CA 90071

12 **14. COURT APPROVAL**

13 14.1 This Consent Judgment shall become effective upon entry by the Court. Parker  
14 shall prepare and file a Motion for Approval of this Consent Judgment pursuant to Health and  
15 Safety Code Section 25249.7(f).

16 14.2 If this Consent Judgment is not approved by the Court, it shall be of no further  
17 force or effect, and shall not be introduced into evidence or otherwise used in any proceeding for  
18 any purpose.

19 **15. ATTORNEY'S FEES**

20 15.1 A party who unsuccessfully brings or contests an action arising out of this Consent  
21 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs  
22 unless the unsuccessful party has acted with substantial justification. For purposes of this  
23 Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
24 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

25 15.2 Nothing in this Section 15 shall preclude a Party from seeking an award of  
26 sanctions pursuant to law.

27 **16. EXECUTION AND COUNTERPARTS**

28 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
means of facsimile and/or portable document format (pdf), which taken together shall be deemed  
to constitute one document.

1 **17. AUTHORIZATION**

2 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
3 by the party he or she represents to stipulate to this Consent Judgment and to enter into and  
4 execute the Consent Judgment on behalf of the party represented and legally bind that party. The  
5 undersigned have read, understand and agree to all of the terms and conditions of this Consent  
6 Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

7  
8 AGREED TO:

9  
10 Dated:

11  
12 \_\_\_\_\_  
13 Maureen Parker

14  
15 Dated:

16 ALLSTAR MARKETING GROUP, LLC.  
17 By \_\_\_\_\_  
18 Name: \_\_\_\_\_  
19 Title: \_\_\_\_\_  
20  
21  
22  
23  
24  
25  
26  
27  
28